IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

WP(C).No. 3604 of 2007(D)

OS. 568/02 of I ADDL. MUNSIFF'S COURT, KOZHIKODE
OP. 412/06 of DISTRICT COURT, KOZHIKODE

.....

PETITIONER:

KERALA NADUVATHUL MUJAHIDEEN,
REP. BY ITS GENERAL SECRETARY,
A.P.ABDUL KHADER MOULAVI, S/O.SAINUDHEEN,
AGED 73 YEARS, NAGARAM AMSOM AND DESOM,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

BY ADV. SMT.PRABHA R.MENON
SRI.M.KRISHNAKUMAR

RESPONDENTS:

1. HUSSAIN MADAVOOR,
S/O.ABOOBACKER KOYA, 49 YEARS,
RESIDING AT PUNATHUM KUZHIYIL HOUSE,
MAVOOR P.O., KOZHIKODE.

2. P.C.AHAMMAD, S/O.ABDU, 69 YEARS,
RESIDING AT KANHIRANDY HOUSE,
SULTHAN BATHERI, WAYANAD DISTRICT.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.R.O.MUHAMED SHEMEEM
SRI.T.P.SAJID

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 3604/07

PETITIONER'S EXHIBITS:

EXT. P1	**TRUE COPY OF THE PLAINT IN THE SUIT OS 568/02**
EXT. P2	**TRUE COPY OF THE WRITTEN STATED IN THE SUIT OS 568/02**
EXT. P3	**TRUE COPY OF THE JUDGMENT IN CRP 133/03 DT. 18.11.05**
EXT. P4	**TRUE COPY OF THE TRANSFER OP 412/06**
EXT. P5	**TRUE COPY OF THE ORDER DT. 19.12.06 PASSED IN TRANSFER OP 412/06**

RESPONDENT'S EXHIBITS:

EXT.R1A	**TRUE COPY OF THEPLAINT IN OS 14/04 BEFORE THE PAYYOLI MUNSIFF'S COURT DT. 24.1.04**
EXT.R1B	**TRUE COPY OF THE JUDGMENT OF DO. DO. DT. 21.8.04**
EXT. R1C	**TRUE COPY OF THE ORDER IN IA 2240/03 IN OS 234/03 OF THE VADAKARA MUNSIFF COURT DT. 12.2.04**
EXT.R1D	**TRUE COPY OF THE ORDER IN CMA 5/04 OF THE SUB COURT, VADAKARA DT. 7.4.04**
EXT.R1E	**TRUE COPY OF THE ORDER IN OS 550/03 OF THE COURT OF THE KANNUR MUNSIFF DT. 19.3.04**

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)No. 3604 of 2007 D

JUDGMENT

The petitioner is the plaintiff in O.S.No. 568/02 on the file of the I Additional Munsiff's Court, Kozhikode. It is submitted that the suit is for declaration that the decisions taken in an alleged meeting of the petitioner Society, said to have been held on 17.8.2002, are illegal and that ousting of some of the then office bearers, including the General Secretary of the Society is invalid and for an injunction restraining the defendants from interfering with the affairs of the Society.

2. The prayers in the writ petition are the following:

"a. set aside the order Exhibit P5.

b. pass direction to transfer the suit O.S. 568/02 on the file of the Munsiff Court-1(a) Kozhikode to any other Munsiff Court in Calicut City and

c. pass any other order direction which this Hon'ble Court may deem fit and necessary in the circumstances of the case."

3. Exhibit P5 is an order passed by the District Judge, Kozhikode on 19.12.2006 in OP(T)No. 412/06, whereby, the request of the petitioner for transfer of O.S.No.568/02 from the I Additional Munsiff's Court, Kozhikode to any other court, has been dismissed. Despite the dismissal of OP(T) No.412/06 on 19.12.2006, this writ petition seeking for transfer is filed only on 31.1.2007 and the interim relief prayed for in the writ petition is for staying all proceedings in O.S.No.568/02 on the file of the court below. It is ascertained from the court below through Registry that as per

proceedings dated 16.12.2006, O.S.No.568/02 on the file of the I Additional Munsiff's Court, Kozhikode, was listed for trial to 3.2.2007 and that no petition was moved before that court to remove the suit from the list. On the other hand, the writ petition was being moved before this Court on 31.1.2007 to have the trial of the suit stayed.

4. In view of the order passed by this Court on 1.2.2007, it is submitted that the suit stands adjourned for trial in the special list to 5.3.2007. Grant of stay is vehemently opposed by the counsel for the respondents. The background in which the writ petition has been filed and stay has been obtained when the suit was posted in the list shows that the avowed object of the petitioner is to see that trial of the case does not take place. The averments in the writ petition show that the grounds on which, the suit is asked for to be transferred is that the Munsiff, while he was the Munsiff at Payyoli, has dismissed another suit

O.S.No.14/04 on the file of that court and that the observations made by him in that suit, while dismissing the said suit, disbelieving certain acts done by the present plaintiff arouses a feeling in the mind of the petitioner/plaintiff that he will not get justice from the concerned Munsiff. I have no doubt that the apprehension stated is baseless. It may so happen that considering the circumstances that come to light on the evidence in a particular case, an officer may make certain observations for the purpose of disposal of that case, while appreciating the evidence in the case. That does not mean that the officer is prejudiced one way or the other. The cases are to be appreciated in the background of evidence that is let in. I have no doubt that, in the instant case also, the court below will dispose of the suit in an appropriate manner, considering the evidence in the case. I have to observe further that there is no truth also in the alleged apprehension expressed for the

reason that the Presiding Officer took charge in that court consequent on the general transfers and the suit continued before him till it was listed and no petition was filed to remove the case from the list and transfer petition was moved before the District Court and on its dismissal this writ petition was filed seeking for transfer and stay, to get the case removed from his court when it was listed, so that the case will remain on file without being disposed of. Petitions of this nature cannot be entertained so as to lower the morale of the subordinate judiciary.

This writ petition, in the circumstances, is dismissed with costs.

2nd March, 2007 (K.P.Balachandran, Judge)

tkv